

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 115 of 1987

&

Special Civil Application No.2024 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL JIVRAMBHAI VITTHALBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR BJ JADEJA for Petitioner

Mr.Kamal Mehta with Mr.M.R.Anand, G.P.for Respondent No.1

MR PM RAVAL for Respondent No. 2  
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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 19/08/96

Both the matters relate to one and the same question as to the levy of octroi. It may be clarified from the beginning that the levy itself is not under challenge in either of the two petitions. What is under challenge is the attempt on the part of respondent no.2, the Dhrangadhra Municipality to recover the octroi at enhanced rate by taking recourse to the power available to it under the Gujarat Municipalities Act. A specimen of the demand notice under Sec.132(3) is annexed at page 23 of Special Civil Application NO.115 of 1987.

2. The grievance made by the petitioners in both the matters is that the Revision made by the State Government in its order dated 8-7-1986 Annexure B page 15 cannot be brought into effect unless formalities as required under Sec.103 are completed.

3. Respondent no.2-Municipality was permitted by the Director of Municipality to revise octroi rates and the increased rates were to be brought into force from 1-1-1986. Though sever items covered under that proposal, the Cotton Merchants and the Cotton Growers of the area approached the Government by way of a representation and while, it was under active consideration of the State Government by Order dated 30-12-1985 as per Annexure A, the enhanced levy on cotton, cotton seeds, etc. came to be suspended. Annexure A, page 13 is a copy of that order.

4. Annexure B, page 15, is the decision given by the State Government in respect of the representation received by it and considered under the provisions of Section 113 of the said Municipalities Act. As a result, their rates came to be revised and the new rates which came to be permitted by the State Government in respect of those items were set out in that Order Annexure B page 15 and rates are to be found at page 16 of that order.

5. As a result of the efforts made by the Merchants Association and the Cotton Growers, the enhancement did continue, but the original rates increased with effect from 1-1-1986 came to be brought down as per the said order Annexure B.

6. Directly, therefore, the requirement of Sec.103 will have to be followed because it says that Rules for sanction under Sec.103 with modification, if any, subject to which sanction is given, shall be published by the

Municipality together with a notice reciting sanction etc. The tax, which is notified, shall come into effect from the date, which shall be specified in such notice and the notice shall not be for a period less than one month. This period is to be reckoned from the date of publication of the notice.

7. The State Government has contended, in its reply affidavit filed in SCA No.2024 of 1987 that it is a mere revision and after that decision was taken to revise the rates, the earlier order of suspension having been rescinded, the order will automatically come into force from 1-1-1986. This submission cannot be accepted because for every revision made at the instance of either of the municipality or of the members of the Borough, the requirement of Sec.103 has to be fulfilled which having not been done, obviously, the plea as to it being a mere revision and the suspension having been rescinded, cannot be entertained.

8. The net result, therefore, is that the levy without publishing the notice under Sec.103 in respect of those two items set out in the petition as well as order Annexure B, cannot be enforced in the manner sought to be done by the municipality.

9. It is also submitted by the State that Sec.130 does empower the Government to suspend the rate and as per Annexure-A order, that was the power exercised. The consequence of the decision taken thereafter will be to rescind the suspension and that has been done. However, this submission is nothing else, but another way of putting the submission as already covered earlier.

10. We have already a decision in this regard of this Court given by a Division Bench (A.R.Baxi & D.A.Desai,JJ. in Saurashtra Iron Foundry and Steel Works Pvt. Ltd. vs. Bhavnagar Nagarpalika and Ano. reported in 11 GLR 351. Identical question was involved in that matter and the learned Judges, after considering the arguments of both the sides, have held that without Notification having been published fixing the date after 30 days of its publication for levy of octroi, as also with regard to the variation in the rate, no levy could be effected. This judgment directly applies to the present case and we respectfully follow the same.

11. In the result, the petitions are allowed and the Orders at Annexures B & D directing the levy of octroi at enhanced rate from 1-1-1986 to 8-7-1986 are quashed and

set aside. Rule is made absolute accordingly.